BANKRUPTCY—RIGHT TO DISCHARGE—WORTHLESS CHECK AS A MATERIALLY FALSE STATEMENT IN WRITING.—The bankrupt had a trading account with his stockbrokers. They called on him for additional margin and he sent a check for $5,000 knowing that he did not have that sum in the bank. *Semble,* this check was a "materially false statement in writing" such as would bar the bankrupt from a discharge under section 14b(3) of the Bankruptcy Act (36 Stat. 839, U. S. Comp. Stat. 1916, §9598). *In re Robinson* (D. C. 1919) 256 Fed. 55.

The great mass of decisions under this section of the Act have had to do with regularly drawn up statements of financial condition, listing the total assets and liabilities of the maker. *Cf.* Collier, Bankruptcy (11th ed.) 389. So uniform were the precedents in this respect that when a case similar to the instant one first came up, it was held that the check was not a statement within the meaning of the Act and the bankrupt was granted a discharge. *In re Rea Bros.* (D. C. 1917) 251 Fed. 431. Although the giving of other bills of exchange does not import a present debt due the drawer from the drawee, the giving of a check is a representation that the drawer has sufficient funds in the bank to pay it. *Mulroney Mfg. Co.* v. *Weeks* (Iowa 1919) 171 N. W. 36; *Foote* v. *People* (N. Y. 1879) 17 Hun 218; *Barton* v. *People* (1890) 135 Ill. 405, 25 N. E. 776. Hence it is submitted that the check itself, in view of delivery in the usual course of business, should be interpreted as such a representation or statement in writing, and is within the purview of the Act, the purpose of which is to punish an attempt on the part of a debtor to misrepresent his ability to pay. Unless this were so, we would reach a conclusion which would hold a person who misrepresents his ability to pay a specific sum less accountable than one who misrepresents his entire financial condition.

CRIMINAL LAW—AIDER AND ABETTOR—DEGREE OF GUILT.—The defendant and one B went to the house of one Matney with the purpose of precipitating trouble and in the course of an argument, B shot and killed Matney. The defendant, upon being convicted of voluntary manslaughter, appealed on the ground that the court's charge, including an instruction on murder, was improper, since B had already been convicted of voluntary manslaughter only. *Semble,* an aider and abettor may be guilty of willful murder though the principal be convicted of manslaughter only. *Bingham* v. *Commonwealth* (Ky. 1919) 210 S. W. 459.

It was an uncontroverted rule of common law that the offense of the accessory could not be greater than that of the principal. May, Crimes (3rd ed.) §70; 1 Bishop, Criminal Law (8th ed.) §666. This was due to the fact that the guilt of the principal was a condition precedent to the conviction of the accessory; *Ex parte Bowen* (1889) 25 Fla. 645, 6 So. 65; *Buck* v. *Commonwealth* (1884) 107 Pa. St. 486; 18 Columbia Law Rev. 471; and it seemed "incongruous and absurd that he who is punished only as a partaker of the guilt of

another should be adjudged guilty of a higher crime than the other." 2 Hawkins, Pleas of the Crown (6th ed.) 445. Unlike the case of the accessory, an aider and abettor, who is a principal in the second degree, 4 Bl. Comm. *34, could always be convicted before the principal in the first degree, or even after the latter's acquittal by a different jury, *Domina Regina* v. *Wallis* (1703) 1 Salk. 334; see *State* v. *Whitt* (1893) 113 N. C. 716, 719, 18 S. E. 715; *contra, Jones* v. *State* (1880) 64 Ga. 697, the former's guilt and crime being deemed independent of the guilt or crime of anyone else. Because of this independence, the law early recognized the possibility of convicting the principal of the second degree of a higher crime than the principal of the first degree, *Mickey* v. *Commonwealth* (1873) 72 Ky. 593; 1 East's Pleas of the Crown c. 5 §121, and the instant case is in line with modern decisions. *Parker* v. *Commonwealth* (1918) 180 Ky. 102, 201 S. W. 475; *semble, State* v. *Gray* (1895) 55 Kan. 135, 39 Pac. 1050. At the present time, in many, if not in most jurisdictions, the distinction between accessory before the fact and principal has been wiped out by statute and the hitherto accessory can also be convicted regardless of his principal. *People* v. *Bliven* (1889) 112 N. Y. 79, 19 N. E. 638; *Spies et al.* v. *People* (1887) 122 Ill. 1, 12 N. E. 865; 18 Columbia Law Rev. 471.

CRIMINAL LAW—SOLICITING TO MURDER—UNBORN CHILD.—The defendant solicited a woman to kill the child with which she was then *enceinte,* after its birth. The child was later born alive. *Held,* that the defendant was guilty of soliciting the murder of a person under section 4 of the Offences against the Person Act of 1861 (24 & 25 Vic. c. 100). *Rex* v. *Shepherd* (Court of Crim. App. 1919) 35 T. L. R. 366.

An unborn child is not considered a "person" who can be killed within the description of murder at common law. 1 Russell, Crimes (7th Eng. ed.) 663; *State* v. *Prude* (1899) 76 Miss. 543, 24 So. 871; *State* v. *Winthrop* (1876) 43 Iowa 519; see *Evans* v. *People* (1872) 49 N. Y. 86. However, if the child be born alive and die from injuries inflicted while *en ventre,* it is homicide; 3 Coke, Institutes 50; 1 Hawkins, Pleas of the Crown (6th ed.) 121; 2 Bishop, Criminal Law (8th ed.) §633; *Clarke* v. *State* (1897) 117 Ala. 1; and one who solicits the murder of an unborn child that is subsequently born and killed is accessory to the murder. *Parker's Case* (1560) 2 Dyer *186b; 2 Bishop, *op. cit.* §634. From the brief report of *Parker's Case, supra,* it would seem that the theory on which the defendant was made accessory was that the solicitation naturally looked to a future event and the effect of the defendant's felonious intent continued in the mind of the murderer until the killing was consummated. Under this theory the result in the instant case is easily justified, since the child was born alive. A more difficult question would have arisen if the child had been born dead or prosecution had been begun before birth. It is hard to see how the statute could reasonably be stretched to cover such a case and a practical diffi-